MELINDA HAAG (CABN 132612)
United States Attorney

DAVID R. CALLAWAY (CABN 121782)
Chief, Criminal Division

BRIGID S. MARTIN (CABN 231705)
Assistant United States Attorney
1301 Clay Street, Suite 340S
Oakland, California 94612
Telephone: (510) 637-3680
FAX: (510) 637-3724
Brigid.Martin@usdoj.gov

Attorneys for the United States of America

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. KEEGAN LEECODI COTTON, Defendant.	NO. CR 14-00093-1 JSW UNITED STATES' SENTENCING MEMORANDUM

The United States files this Sentencing Memorandum in support of its recommendation that this Court sentence defendant in the captioned case, Keegan Leecodi Cotton, to a term of imprisonment of 70 months and a term of supervised release of three years, consistent with the Plea Agreement entered by the parties pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), and the recommendation of the United States Probation Office.

INTRODUCTION

Between in or about the Fall of 2012 and January 2014, a number of individuals participated in a conspiracy to rob jewelry from victims who advertised items for sale on Craigslist, and from jewelry stores. The robbery crew was responsible for at least 25 robberies, during many of which expensive jewelry items such as diamond rings and Rolex watches were successfully stolen. The cast of conspirators present and participating in each robbery varied from robbery to robbery, though a core group were involved in all or nearly all of the robberies. While Cotton was not one of the core members involved in most of the robberies, he was involved in enough of the robberies to make him a mid-level member of the conspiracy: much lower than Michael Martin and Clarence Andrews, for example, but higher than Rafael Davis and Jaedon Evans.

FACTS

On June 20, 2013, defendant and two codefendants went to the intersection of 3rd Street and MLK Way, in Oakland, for the purpose of committing a robbery. PSR, ¶ 16. The defendant knew that he was going to that location for the purpose of committing a robbery. *Id.* The defendant and a second coconspirator waited in the area until a limousine arrived carrying the targeted robbery victim. *Id.* Codefendant Evans brandished an Airsoft BB gun, while defendant Cotton tried to get into the back seat of the limousine and steal items from the female victim passenger, including a diamond she had brought to sell. *Id.* The victim had advertised a diamond for sale on Craigslist and was lured to Oakland from Colorado to meet with a man who had offered to buy the diamond. *Id.* Instead, the crew who lured her to Oakland planned to – and attempted to – rob the victim of the diamond. *Id.*

Both the targeted victim and the limousine driver ran away, and thus the robbery was ultimately unsuccessful. *Id.* After the robbery attempt was thwarted, the three coconspirators present tried to flee the scene. *Id.* at ¶ 17. Fortuitously, Oakland Police Department (OPD) Officers were nearby and happened to see the attempted robbery. *Id.* They arrived quickly and apprehend all three codefendants. *Id.* The police apprehended two of the coconspirators, codefendants Davis and Evans, in Davis's car, where officers recovered the Airsoft BB gun that Evans had used in the attempted robbery as well as a real firearm, a .25 caliber Raven Arms firearm, under a seat in the backseat area of the car. *Id.* Based on the identification of the victims and physical description of the firearm used, however, we know that Evans brandished the BB gun in the robbery attempt, not the real firearm. *Id.* Defendant Cotton was apprehended by police as he tried to flee on foot. *Id.* The victim of the robbery attempt identified Cotton as one of the robbers in a field show up on scene. *Id.* at ¶ 18. After his arrest, Cotton waived his rights and confessed to participating in the attempted robbery. *Id.* at ¶ 19.

Subsequent to the attempted robbery, further investigation by law enforcement revealed that the June 20, 2013 attempted robbery was the metaphoric tip of the iceberg, and was one of many robberies of this type carried out by a larger robbery crew that had been operating in the area for more than a year. *Id.* at ¶ 11. The conspiracy was responsible for approximately 25 or more robberies. *Id.* at ¶ 12. And the conspiracy involved enough individuals that not all coconspirators were involved in each robbery, though the core leadership maintained oversight and participation so that the *modus operandi* remained generally the same.

Local and federal law enforcement gathered evidence that Cotton was personally involved in approximately five of the robberies, including the June 20, 2013 attempted robbery. Cotton admitted that between Fall 2012 and June 2013, he participated in the robbery conspiracy and agreed with two or more individuals to rob victims of jewelry. *Id.* at ¶ 12. Cotton stated that he never used or possessed a firearm during any of the robberies. *Id.* Cotton further stated that in the robberies he participated in, coconspirators brandished BB guns like the one used on June 20, 2013, and did not carry or use real firearms to his knowledge. *Id.*

Cotton stated that lookout or driver was generally his role except on two occasions – June 20, 2013 and December 7, 2012, when he participated in the actual taking or attempted taking of jewelry. *Id.* While Cotton appears somewhat hazy on exact dates and locations of the three other robberies, that may be because Cotton acted as a lookout or getaway driver in those robberies; it was unusual for him to interact or meet the victims.

The robbery on December 7, 2012, occurred at a jewelry store in Concord, California, although the robbery was of an individual and not the store itself. *Id.* at ¶ 13. Similar to other robberies carried out by the conspiracy, the victim of the December 7 robbery had advertised a diamond ring for sale on Craigslist. A buyer calling himself "Sean," contacted the victim and they agreed to meet at Concord Jewelers to authenticate the value of the ring and continue the negotiation. *Id.* When the victim arrived at the jewelry store, defendant Cotton was there to meet him about the ring. *Id.* The victim was not sure if Cotton was the person he had spoken to on the phone. *Id.* The government believes based on its knowledge of the conspiracy that it is unlikely that Cotton identified and contacted the victim.

After the victim handed Cotton the ring for Cotton to inspect, Cotton ran out of the store, stealing the ring. *Id.* The victim chased Cotton and saw Cotton meet up with another man, who began running alongside Cotton. *Id.* at ¶ 14. The stolen ring was appraised at $31,933.75. *Id.* at ¶ 15.

PROCEDURAL HISTORY

On February 20, 2014, a federal grand jury returned an Indictment charging the defendant and codefendants with one count of conspiracy to commit robbery, and one count of attempted robbery, both in violation of 18 U.S.C. § 1951(a). On April 10, 2014, a Superseding Indictment was returned by the grand jury adding charges and defendants, but not changing the counts as to this defendant. Defendant Cotton thus remains charged in the Superseding Indictment with conspiracy to commit robbery (Count One), and attempted robbery (Count Two), in violation of 18 U.S.C. § 1951(a). On March 3, 2015, the defendant pleaded guilty to Counts One and Two of the Superseding Indictment, conspiracy to commit robbery and attempted robbery, pursuant to a Plea Agreement entered under Fed. R. Crim. P. 11(c)(1)(A) and 11(c)(1)(C).

PROCEDURAL HISTORY IN CASES AGAINST COCONSPIRATORS

Codefendants Davis and Evans pleaded guilty and have been sentenced in this case. Evans and Davis both pleaded only to participation in the June 20, 2013 attempted robbery. Davis, the driver, was sentenced to 41 months in custody. Evans was sentenced to 46 months in custody. Coconspirator in related case CR 14-00094 YGR, Clarence Andrews, was one of the highest level participants in the conspiracy. Andrews was sentenced by the Honorable Yvonne Gonzalez Rogers after entering an open plea during which he admitted his role in the conspiracy and, specifically, a number of the more violent robberies, resulting in injury to at least one victim. Andrews was also a Career Offender. Andrews was sentenced to 210 months in custody (17½ years). Codefendant Michael Martin is set for jury trial In October 2015. The government is continuing to investigate and possibly charge additional members of the robbery crew.

DEFENDANT COTTON'S PLEA AGREEMENT

In the Plea Agreement entered by the parties, the defendant admitted guilt to both Count One (Conspiracy) and Count Two (Attempted Robbery). Although not charged as separate substantive counts, the defendant also admitted to participating in three additional robberies as part of the conspiracy. He further admitted that in each of the robberies he was involved in, a dangerous weapon (BB gun) was brandished. The Agreement contemplates a Sentencing Guidelines Base Offense Level of 20, a 3-level increase because a dangerous weapon was brandished, a 4-level increase for multiple count adjustment based on the number and characteristics of additional robberies Cotton participated in, and a 3-level reduction for acceptance of responsibility, for a total Adjusted Offense Level of 24. Based on a Pre-Plea Presentence Report, the parties agree that the Criminal History Category of the defendant is CHC III. As set forth in the Agreement, the parties agree that a reasonable and appropriate disposition in this case includes a term of imprisonment of 70 months. This is a sentence at the middle of the Sentencing Guidelines range recommended for this defendant for the conduct committed. The parties further agree that Defendant's sentence should include a 3-year term of supervised release, a $200 special assessment, and forfeiture of any interest in the BB gun in the robbery, as well as forfeiture of any interest (if any) in the firearm found in the car Davis was driving on June 20, 2013.

UNITED STATES SENTENCING GUIDELINES CALCULATION

The United States agrees with the accuracy of U.S. Probation's Sentencing Guidelines calculations and the calculation of Defendant's Criminal History Category as set forth in the Presentence Report (PSR). The parties' Plea Agreement similarly reflects the understanding that offense level 24 is the correct calculation, as set forth above. The government agrees that Defendant's Criminal History Category is III. The Sentencing Guidelines range recommended for offense level 24 and CHC III is 63-78 months. U.S. Probation has recommended a sentence of 70 months. The parties have agreed in a binding Plea Agreement to a sentence of 70 months.

SENTENCING ARGUMENT

After *United States v. Booker*, 543 U.S. 220 (2005), the United States Sentencing Guidelines are no longer mandatory, but remain advisory. *United States v. Carty*, 520 F.3d 984, 990 (9th Cir. 2008). Sentencing proceedings begin by correctly calculating the applicable Guidelines range. *Id.* at 991. In this sense, the Guidelines are "the starting point and the initial benchmark." *Id.* The sentencing court should then consider the 18 U.S.C. § 3553(a) factors to further determine what sentence would be reasonable and appropriate. *Id.* at 991-92. If the sentencing court decides that a sentence outside the

Guidelines is warranted, the court must consider the extent of the deviation and ensure that the justification is significantly compelling to support the degree of the variance. *Id.* at 991.

The recommended sentence of 70 months of imprisonment is within the range established by the Guidelines and is reasonable and appropriate based the nature and circumstances of the criminal conduct and the history and characteristics of the defendant. The recommended sentence is also sufficient, but not greater than necessary, to meet the goals of sentencing set forth in 18 U.S.C. § 3553(a)(2).

The government's recommendation on conviction and sentence attempts to balance the seriousness of the offense, the overall context of the scheme, defendant's personal characteristics and history, and defendant's specific role in the conspiracy as compared to codefendants and coconspirators.

The defendant was a participant in a sophisticated, calculated plot to lure victims from outside the area – often outside the state – under the guise that one of the coconspirators was willing to buy expensive jewelry from the victim. The conspiracy found victims by searching Craigslist for individuals selling expensive jewelry that could be resold, and contacted those victims to further determine the victim's vulnerability. Although the criminal plot was sophisticated, this was orchestrated by conspirators other than the defendant. The defendant's role was to act according to the plan laid out by older, more criminally experienced coconspirators.

Although he is young, the 21-year-old defendant already has two felonies and a significant criminal history. At age 16, defendant received a felony wardship adjudication for possession of drugs for sale. PSR, ¶ 71. In 2011, at age 17, the defendant was arrested twice for robbery and sent to juvenile hall. *Id*. at ¶¶ 76-77. Both robberies involved the defendant working with a group of perpetrators, and each time the victim reported that one of the robbers pointed what appeared to be a firearm at the victim. *Id.* Finally, in April 2012, at age 18, just months before the Concord robbery, the defendant was convicted of felony robbery. *Id*. at ¶ 72. The government believes it may have been during this period of incarceration that defendant was introduced to the robbery crew behind these Craigslist robberies.

This defendant has had three chances already to stop committing robberies, or hanging around people who commit robberies, and he has chosen to continue to commit premeditated robberies against victims who often have traveled far from their homes carrying a prized possession. Although the defendant states that BB guns were used during the robberies, to a victim who has what appears to be a real gun pointed at them, the robbery is just as traumatic. The victims did not know they were not real guns.

The government also takes into account the sentences received by coconspirators and codefendants. The lowest level codefendants, Davis and Evans, received sentences at the middle of the guidelines range. The offense level which helped determine that range was based on each codefendant's involvement in a single robbery attempt. Here, the government has tried to fashion a similar agreement – an agreement on a sentence at the middle of the guidelines range for defendant Cotton. Of course this is appropriately higher than the resulting sentences for Davis and Evans because Cotton's offense level is based on his involvement in a total of five robberies. And, of course, it is lower than the 210 months sentence given to coconspirator Andrews, who was a higher level participant, more involved in the planning of the robberies, significantly older than Cotton, Davis, and Evans (Andrews is 40), and a Career Offender with a more significant criminal history. A sentence of 70 months balances all of these factors, and is reasonable and appropriate for this defendant.

For these reasons the government recommends that the defendant be committed to custody of the Bureau of Prisons for a lengthy period in order to ensure the safety of the public and punish the defendant for the violent offenses he committed. The government believes that a sentence of 70 months will be enough time to deter the defendant and those similarly situated, adequately punish the defendant, and protect the community.

RESTITUTION

The victim of the December 7, 2012 robbery has applied for and should be granted restitution. The parties' Plea Agreement allows for restitution as determined by the Court. Therefore, the government joins Probation and requests that the defendant provide restitution in the amount of $31,933.75 as set forth in the PSR. This amount may be imposed as joint and several with any other conspirator also convicted of involvement in the robbery conspiracy or the December 7, 2012 robbery, specifically.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court adopt the

Recommendation of the parties sentence the defendant to a term of imprisonment of 70 months, a three-year term of supervised release, and impose a $200 special assessment, restitution, and a special search condition.

Dated: May 26, 2015

Respectfully Submitted,

MELINDA HAAG
United States Attorney

/s/ Brigid Martin______________
BRIGID S. MARTIN
Assistant United States Attorney